

system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a sub-contractor to serve as a lower-tier sub-contractor, through a process over which the entity exercised no control.

#### **209.570-3 Procedures.**

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(b) Consider all information regarding the prospective contractor’s direct financial interests in view of the prohibition at 209.570-2(a); and

(c) Follow the procedures at PGI 209.570-3.

#### **209.570-4 Solicitation provision and contract clause.**

(a) Use the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

## **PART 210—MARKET RESEARCH**

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

### **210.001 Policy.**

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before—

(A) Soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; or

(B) Issuing a solicitation with tiered evaluation of offers (Section 816 of Public Law 109-163); and

(ii) Use the results of market research to determine—

(A) Whether consolidation of contract requirements is necessary and justified in accordance with §207.170-3; or

(B) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

[71 FR 53043, Sept. 8, 2006]

## **PART 211—DESCRIBING AGENCY NEEDS**

Sec.

211.002 Policy.

211.002-70 Contract clause.

### **Subpart 211.1—Selecting and Developing Requirements Documents**

211.105 Items peculiar to one manufacturer.

211.107 Solicitation provision.

### **Subpart 211.2—Using and Maintaining Requirements Documents**

211.201 Identification and availability of specifications.

211.204 Solicitation provisions and contract clauses.

211.270 [Reserved]

## **211.002**

- 211.271 Elimination of use of class I ozone-depleting substances.
- 211.272 Alternate preservation, packaging, and packing.
- 211.273 Substitutions for military or Federal specifications and standards.
- 211.273-1 Definition.
- 211.273-2 Policy.
- 211.273-3 Procedures.
- 211.273-4 Contract clause.
- 211.274 Item identification and valuation requirements.
- 211.274-1 General.
- 211.274-2 Policy for unique item identification.
- 211.274-3 Policy for valuation.
- 211.274-4 Policy for item unique identification of Government property.
- 211.274-5 Contract clauses.
- 211.275 Radio frequency identification.
- 211.275-1 Definitions.
- 211.275-2 Policy.
- 211.275-3 Contract clause.

### **Subpart 211.5—Liquidated Damages**

- 211.503 Contract clauses.

### **Subpart 211.6—Priorities and Allocations**

- 211.602 General.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61594, Nov. 30, 1995, unless otherwise noted.

#### **211.002 Policy.**

All defense technology and acquisition programs in DoD are subject to the policies and procedures in DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System.

[71 FR 27641, May 12, 2006]

#### **211.002-70 Contract clause.**

Use the clause at 252.211-7000, Acquisition Streamlining, in all

### **Subpart 211.1—Selecting and Developing Requirements Documents**

#### **211.105 Items peculiar to one manufacturer.**

Follow the publication requirements at PGI 211.105.

[70 FR 23804, May 5, 2005]

## **48 CFR Ch. 2 (10-1-08 Edition)**

#### **211.107 Solicitation provision.**

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations.

[65 FR 6553, Feb. 10, 2000]

### **Subpart 211.2—Using and Maintaining Requirements Documents**

#### **211.201 Identification and availability of specifications.**

Follow the procedures at PGI 211.201 for use of specifications, standards, and data item descriptions.

[71 FR 27641, May 12, 2006]

#### **211.204 Solicitation provisions and contract clauses.**

(c) When contract performance requires use of specifications, standards, and data item descriptions that are not listed in the Acquisition Streamlining and Standardization Information System database, use provisions, as appropriate, substantially the same as those at—

(i) 252.211-7001, Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents; and

(ii) 252.211-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

[71 FR 27641, May 12, 2006]

#### **211.270 [Reserved]**

#### **211.271 Elimination of use of class I ozone-depleting substances.**

See subpart 223.8 for restrictions on contracting for ozone-depleting substances.

[70 FR 73150, Dec. 9, 2005]

#### **211.272 Alternate preservation, packaging, and packing.**

Use the provision at 252.211-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include

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military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

### **211.273 Substitutions for military or Federal specifications and standards.**

#### **211.273-1 Definition.**

*SPI process*, as used in this section, is defined in the clause at 252.211-7005, Substitutions for Military or Federal Specifications and Standards.

[62 FR 44224, Aug. 20, 1997]

#### **211.273-2 Policy.**

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives of the contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary.

[62 FR 44224, Aug. 20, 1997, as amended at 64 FR 14399, Mar. 25, 1999; 65 FR 52952, Aug. 31, 2000; 71 FR 27641, May 12, 2006]

#### **211.273-3 Procedures.**

Follow the procedures at PGI 211.273-3 for encouraging the use of SPI processes instead of military or Federal specifications and standards.

[71 FR 27641, May 12, 2006]

#### **211.273-4 Contract clause.**

Use the clause at 252.211-7005, Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

[62 FR 44224, Aug. 20, 1997]

### **211.274 Item identification and valuation requirements.**

#### **211.274-1 General.**

Unique item identification and valuation is a system of marking and valuing items delivered to DoD that will enhance logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through unique item identification policy, which capitalizes on leading practices and embraces open standards, DoD can—

(a) Achieve lower life-cycle cost of item management and improve life-cycle property management;

(b) Improve operational readiness;

(c) Provide reliable accountability of property and asset visibility throughout the life cycle; and

(d) Reduce the burden on the workforce through increased productivity and efficiency.

[70 FR 20836, Apr. 22, 2005]

#### **211.274-2 Policy for unique item identification.**

(a) It is DoD policy that DoD unique item identification, or a DoD recognized unique identification equivalent, is required for—

(1) All delivered items for which the Government's unit acquisition cost is \$5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than \$5,000, when identified by the requiring activity as serially managed, mission essential, or controlled inventory;

(3) Items for which the Government's unit acquisition cost is less than \$5,000, when the requiring activity determines that permanent identification is required; and

(4) Regardless of value—

(i) Any DoD serially managed subassembly, component, or part embedded within a delivered item; and

(ii) The parent item (as defined in 252.211-7003(a)) that contains the embedded subassembly, component, or part.

(b) *Exceptions.* The Contractor will not be required to provide DoD unique item identification if—

(1) The items, as determined by the head of the agency, are to be used to support a contingency operation or to

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facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR Part 12 or Part 8.

(i) The determination and findings shall be executed by—

(A) The Component Acquisition Executive for an acquisition category (ACAT) I program; or

(B) The head of the contracting activity for all other programs.

(ii) The DoD Unique Item Identification Program Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Send the copy to DPAP, SPEC ASST, 3060 Defense Pentagon, 3E1044, Washington, DC 20301-3060; or by facsimile to (703) 695-7596.

[70 FR 20836, Apr. 22, 2005]

### 211.274-3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost (as defined in 252.211-7003(a)) for all items delivered, even if none of the criteria for placing a unique item identification mark applies.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items delivered under a time-and-materials contract, the contractor's estimated fully burdened unit cost to the Government at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be separately identified.

[70 FR 20836, Apr. 22, 2005]

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### 211.274-4 Policy for item unique identification of Government property.

(a) It is DoD policy that DoD item unique identification, or a DoD-recognized unique identification equivalent, is required for tangible personal property in accordance with 211.274-2, for items—

(1) In the possession of the Government and furnished to a contractor for the performance of a contract; or

(2) Directly acquired by the Government and subsequently furnished to a contractor for the performance of a contract.

(b) The policy in paragraph (a) of this subsection does not apply to—

(1) Property under any statutory leasing authority;

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(3) Software and intellectual property; or

(4) Real property.

[72 FR 52297, Sept. 13, 2007]

### 211.274-5 Contract clauses.

(a)(1) Use the clause at 252.211-7003, Item Identification and Valuation, in solicitations and contracts that—

(i) Require item identification or valuation, or both, in accordance with 211.274-2 and 211.274-3; or

(ii) Contain the clause at 252.211-7007.

(2) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below \$5,000 in unit acquisition cost for which DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(2) or (3).

(3) Complete paragraph (c)(1)(iii) of the clause with the applicable attachment number, when DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(4) for DoD serially managed subassemblies, components, or parts embedded within deliverable items.

(4) Use the clause with its Alternate I if—

(i) An exception in 211.274-2(b) applies; or

(ii) Items are to be delivered to the Government and none of the criteria for placing a unique item identification mark applies.

(b)(1) Use the clause at 252.211-7007, Item Unique Identification of Government Property, in solicitations and contracts that contain the clause at—

(i) FAR 52.245-1, Government Property; or

(ii) FAR 52.245-2, Government Property Installation Operation Services.

(2) Complete paragraph (b)(2)(ii) of the clause as applicable.

[72 FR 52298, Sept. 13, 2007]

#### **211.275 Radio frequency identification.**

##### **211.275-1 Definitions.**

*Bulk commodities, case, palletized unit load, passive RFID tag, and radio frequency identification* are defined in the clause at 252.211-7006, Radio Frequency Identification.

[70 FR 53968, Sept. 13, 2005]

##### **211.275-2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, radio frequency identification (RFID), in the form of a passive RFID tag, is required for individual cases and palletized unit loads that—

(1) Contain items in any of the following classes of supply, as defined in DoD 4140.1-R, DoD Supply Chain Material Management Regulation, AP1.1.11:

(i) Subclass of Class I—Packaged operational rations.

(ii) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(iii) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(iv) Class IV—Construction and barrier materials.

(v) Class VI—Personal demand items (non-military sales items).

(vi) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(vii) Class IX—Repair parts and components including kits, assemblies and

subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(2) Will be shipped to one of the following locations:

(i) Defense Distribution Depot, Susquehanna, PA: DoDAAC W25G1U or SW3124.

(ii) Defense Distribution Depot, San Joaquin, CA: DoDAAC W62G2T or SW3224.

(iii) Defense Distribution Depot, Albany, GA: DoDAAC SW3121.

(iv) Defense Distribution Depot, Aniston, AL: DoDAAC W31G1Z or SW3120.

(v) Defense Distribution Depot, Barstow, CA: DoDAAC SW3215.

(vi) Defense Distribution Depot, Cherry Point, NC: DoDAAC SW3113.

(vii) Defense Distribution Depot, Columbus, OH: DoDAAC SW0700.

(viii) Defense Distribution Depot, Corpus Christi, TX: DoDAAC W45H08 or SW3222.

(ix) Defense Distribution Depot, Hill, UT: DoDAAC SW3210.

(x) Defense Distribution Depot, Jacksonville, FL: DoDAAC SW3122.

(xi) Defense Distribution Depot, Oklahoma City, OK: DoDAAC SW3211.

(xii) Defense Distribution Depot, Norfolk, VA: DoDAAC SW3117.

(xiii) Defense Distribution Depot, Puget Sound, WA: DoDAAC SW3216.

(xiv) Defense Distribution Depot, Red River, TX: DoDAAC W45G19 or SW3227.

(xv) Defense Distribution Depot, Richmond, VA: DoDAAC SW0400.

(xvi) Defense Distribution Depot, San Diego, CA: DoDAAC SW3218.

(xvii) Defense Distribution Depot, Tobyhanna, PA: DoDAAC W25G1W or SW3114.

(xviii) Defense Distribution Depot, Warner Robins, GA: DoDAAC SW3119.

(xix) Air Mobility Command Terminal, Charleston Air Force Base, Charleston, SC: Air Terminal Identifier Code CHS.

(xx) Air Mobility Command Terminal, Naval Air Station, Norfolk, VA: Air Terminal Identifier Code NGU.

(xxi) Air Mobility Command Terminal, Travis Air Force Base, Fairfield, CA: Air Terminal Identifier Code SUU.

(xxii) A location outside the contiguous United States when the shipment

### **211.275-3**

has been assigned Transportation Priority 1.

(b) The following are excluded from the requirements of paragraph (a) of this subsection:

(1) Shipments of bulk commodities.

(2) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213-1, Fast Payment Procedures.

[72 FR 6483, Feb. 12, 2007]

#### **211.275-3 Contract clause.**

Use the clause at 252.211-7006, Radio Frequency Identification, in solicitations and contracts that will require shipment of items meeting the criteria at 211.275-2.

[70 FR 53968, Sept. 13, 2005]

### **Subpart 211.5—Liquidated Damages**

#### **211.503 Contract clauses.**

(b) Use the clause at FAR 52.211-12, Liquidated Damages—Construction, in all construction contracts exceeding \$550,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of \$550,000 or less is optional.

[60 FR 61594, Nov. 30, 1995. Redesignated at 66 FR 49861, Oct. 1, 2001; 71 FR 75892, Dec. 19, 2006]

### **Subpart 211.6—Priorities and Allocations**

#### **211.602 General.**

DoD implementation of the Defense Priorities and Allocations System is in DoDD 4400.1, Defense Production Act Programs.

[64 FR 51075, Sept. 21, 1999]

## **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

### **Subpart 212.1—Acquisition of Commercial Items—General**

Sec.

212.102 Applicability.

## **48 CFR Ch. 2 (10-1-08 Edition)**

### **Subpart 212.2—Special Requirements for the Acquisition of Commercial Items**

212.211 Technical data.

212.212 Computer software.

212.270 Major weapon systems as commercial items.

### **Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

### **Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items**

212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

### **Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items**

212.602 Streamlined evaluation of offers.

### **Subpart 212.70—Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority**

212.7000 Scope.

212.7001 Definitions.

212.7002 Pilot program.

212.7002-1 Contracts under the program.

212.7002-2 Subcontracts under the program.

212.7003 Technical data and computer software.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61595, Nov. 30, 1995, unless otherwise noted.

### **Subpart 212.1—Acquisition of Commercial Items—General**

SOURCE: 73 FR 4114, Jan. 24, 2008, unless otherwise noted.